

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO D. BOYKINS,

Plaintiff,

CASE NO. 1:13-CV-1024

v.

HON. ROBERT J. JONKER

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

_____ /

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 20) and Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (docket # 21). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. The Court finds the Magistrate Judge's Report and Recommendation (docket # 20), which recommends affirming the decision of the ALJ to deny Plaintiff's request for disability benefits, factually sound and legally correct.

Plaintiff's Objections principally reiterate and expand arguments made in his initial briefing. The Magistrate Judge has already carefully considered and properly rejected these arguments. To the extent Plaintiff objects that res judicata required ALJ Jones to make the same findings of severe impairments as ALJ English and apply the findings in determining RFC, the argument is beside the point in Plaintiff's case. The Report and Recommendation correctly points out that finding even one severe impairment required ALJ Jones to continue with the remaining steps in the disability evaluation. At the step of determining RFC, the ALJ must consider both severe and non-severe impairments. Upon consideration of Plaintiff's impairments, whether classified as severe or non-severe, ALJ Jones found exactly the same residual functional capacity for exertional activity for Plaintiff as ALJ English. Each ALJ found that Plaintiff "has the residual functional capacity to perform a full range of work at all exertional levels." (docket # 7-2, A.R. 09; docket # 7-3, A.R. 77.) Similarly, ALJ Jones and ALJ English made almost identical findings of non-exertional limitations for Plaintiff. ALJ Jones found Plaintiff "non-exertionally limited to simple, routine, and repetitive tasks with occasional interaction with the public." (docket # 7-2, A.R. 9.) ALJ English found "the following nonexertional limitations: work must be simple and unskilled with an SVP rating of one or two only and involve no more than occasional contact with the general public." (docket # 7-3,

A.R. 77.) In Plaintiff's case, it simply makes no difference whether ALJ Jones classified as severe all the impairments ALJ classified as severe. Nor are any of Plaintiff's other objections persuasive. Nothing in Plaintiff's Objections changes the fundamental analysis the Report and Recommendation details. For precisely the reasons the Report and Recommendation describes, substantial evidence supports the ALJ's decision to deny Plaintiff's request for disability benefits.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 20) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that the Commissioner's decision is **AFFIRMED**

Dated: March 31, 2015

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE